Zero Tolerance For Sexual Abuse

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Zero Tolerance Rule

1. Registered Dietitians cannot have sex with a client.
2. Registered Dietitians cannot treat a sexual partner.

HOW THE RHPA DEFINES SEXUAL ABUSE

Sometimes statutes give words meaning quite different from their ordinary usage. If so, the words must be read as they are defined, and not as they would ordinarily be interpreted. This applies to the prohibition against "sexual abuse" found in the *Regulated Health Professions Act* (RHPA). In the RHPA, sexual abuse means any sexual words, gestures or touching between a registered health professional and a client. The RHPA uses the word "patient", referring to a clinical relationship, where most RDs use the word "client". It is important to note that under this definition,

1. Sexual abuse does not have to involve actual sex. Sexualized banter or other non-touching activities are included.
2. Consent is irrelevant. Even if the client initiates or willingly participates in the sexual activity, it is still prohibited.
3. Evidence of exploitation is not required. Even though both parties are genuinely in love at the time, sexual relations with a client are never permitted.

This strict approach is taken to prevent the abuse of the power and status that health practitioners often have over their clients in a clinical context. Sometimes the parties are even fooling themselves and only realize afterwards how inappropriate the relationship was. Also, requiring the College to prove that there was exploitation would significantly jeopardize its ability to eradicate the victimization of vulnerable people.

NO SPOUSAL EXEMPTION

Needless to say, this zero tolerance approach to eliminating sexual abuse has had its detractors, particularly in professions where the status and power imbalance issues may not be as pronounced as it is for physicians or mental health practitioners. There have been three major court challenges during the past decade asserting that the provisions were "over-sweeping" in nature. In each case, the Ontario Court of Appeal affirmed the validity (including constitutional validity) and societal importance of the provisions. The most recent case, decided earlier this year, was Leering v. the College of Chiropractors of Ontario.

As is often the case, the complaint in the Leering case was initiated by the chiropractor's

sexual partner after the relationship ended badly. There was no dispute that the patient consented to the sexual activity. In fact, the person first became a sexual partner and developed an established personal relationship with the chiropractor before receiving any treatment. However, the court held that the definition of "sexual abuse" in the RHPA was clear; there is no spousal exemption.

SO WHO IS A "CLIENT"?

The Court of Appeal indicated that there may be some discretion for Discipline Committees on determining who is the client. The determining factor is whether there was an ongoing clinical relationship or not. In the Leering case, the chiropractor had clearly provided clinical care and billed for it as treatment. The Court suggested that incidental care (e.g., the usual domestic support of a spouse undergoing a headache, fever or cold) would likely not make the family member a patient. Dietitians who give the usual sorts of guidance about food and lifestyle choices would not be making their spouse a client simply because the dietitian was more knowledgeable about those issues.

However, where more than a casual assessment is involved, or where the support becomes ongoing or systematic, then a spouse could well become a client. This would particularly be the case where the dietitian is replacing what would generally be done by another registered health professional in other circumstances. For example, if the spouse had diabetes and would ordinarily be seeing a dietitian for counselling and dietary planning, the family member would become a client if the dietitian took over that role. However, there likely would not be a dietitian-patient relationship where a dietitian supported a spouse in implementing the treatment plan of another dietitian. RDs should not conclude from the Leering case that as long as one does not create a chart or submit a bill, that the person is not a client. The issue is whether a clinical relationship has developed.

REGISTRATION WILL BE REVOKED FOR AT LEAST 5 YEARS

The two sides of the client sexual abuse coin are:

1. Registered Dietitians cannot have sex with a client.
2. Registered Dietitians cannot treat a sexual partner.

Where a member is found guilty of sexual activity which involves frank sexual acts with a client, like sexual intercourse, their registration will be revoked for at least five years. The fact that the former sexual partner may have ulterior reasons for raising the matter is not a defence.

CDO Resources About Sexual Abuse and Professional Boundaries

Richard Steinecke & CDO. *Jurisprudence Handbook for Dietitians in Ontario (2010 Web edition),* www.cdo.on.ca > Resources

- Chapter 3: Mandatory Report of Sexual Abuse, p. 29
- Chapter 10: Boundary Issues, p. 109

College Website: > Practice Standards & Resources

- Client Relations

***résumé* articles:** www.cdo.on.ca > Resources

- Fall 2009: RD Responsibilities for Mandatory Reporting in a Facility, p. 4.
- Fall 2004: Managing Professional Boundaries, Part I.
- Winter 2005: Managing Professional Boundaries, Part II: The Client's Boundaries.

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Zero Tolerance for Sexual Abuse - Practice Scenarios

Sexual Abuse Scale

SCENARIO 1: RECEIVING A REFERRAL TO TREAT A SPOUSE

Anna is an RD working in a remote area in Northern Ontario. She is the only RD working in diabetes care within a 500 km radius. Anna's husband Bill has recently been diagnosed with diabetes and his physician has referred Bill to see an RD. Anna has received the referral to see Bill for diabetes management. Is Anna able to provide dietetic services to Bill to help him manage his diabetes?

In this scenario, Anna and Bill are presumably engaged in a sexual relationship that predates the pending professional relationship. Even if Bill consents to receiving dietetic services from Anna, the court's zero-tolerance rule would apply. Anna would be in the "Danger Zone" of the sexual abuse scale, above, and would be prohibited from providing dietetic treatment to Bill.

It would be important for Anna to communicate with the referring physician so he/she is aware that Anna is not permitted to provide active treatment to her husband. As Anna is the only RD working in diabetes within a 500 km radius, there would not be another local diabetes RD to refer to. As a result, Anna, Bill, and the physician brainstorm about other options and come up with the following possibilities:

a) The MD could refer Bill to an RD who works in the area of diabetes in a neighbouring community. As the distance would be +500 km away, this RD could provide diabetes counselling to Bill remotely through telephone or web-based means.

b) The MD could refer Bill to another RD in the area. This RD may not work in diabetes, but Anna could liaise with the RD re: diabetes management while not actively being involved in Bill's treatment. This may also provide a good opportunity for the RD to gain skills in diabetes and potentially provide cross-coverage on an as-needed basis.

c) Where available, Bill could see a nurse who works in the area of diabetes. Specific questions relating to nutrition can be directed to Anna through the nurse. Anna would not be directly involved in Bill's treatment, but could be a nutrition resource, as needed.

d) Anna could connect Bill with EatRightOntario for him to speak with an RD at the call centre to obtain resources pertaining to diabetes.

e) Anna could liaise with the physician re: dietary management and provide resources for the MD to share with Bill while not being actively involved in her husband's care.

Anna and Bill discuss the options and Bill's preferred choice is to seek dietetic services from an RD who works in diabetes in a neighbouring community. A series of telephone appointments were scheduled and all nutrition services were provided remotely.

It is important to note that Anna may assist Bill with questions or issues surrounding his diabetes management, especially those related to routine daily activities (e.g., meal planning, timing of meals/snacks, regular blood glucose checks, etc.). Provided Anna is not involved in a formal client-professional therapeutic relationship with Bill, she would not be violating the sexual abuse restrictions for regulated health care professionals in Ontario.

SCENARIO 2: HAVING ROMANTIC FEELINGS FOR A CLIENT

Joanne is an RD who has been providing dietetic services to a client regularly for the last six months. Joanne has recently started to develop romantic feelings for this client. Although the professional-client relationship has been appropriate until now, the feelings appear to be mutual. At the client's last visit, he asks Joanne if she would like to accompany him to an upcoming charity gala dinner. Joanne accepts the invitation and they attend the function.

The evening goes well and sparks are flying! It is clear to both Anna and her client that there is an undeniable attraction between them. At the end of the evening, they say goodbye and indicate they will see each other at his next appointment. Are there any concerns with Joanne continuing to see this client for dietetic services?

In this scenario, Joanne would be in the "Caution Zone" of the *Sexual Abuse Scale* and perhaps heading towards the "Danger Zone." Despite the fact that no acts of a sexual nature have occurred between Joanne and her client, it is clear they have mutual romantic feelings for one another. There is a strong possibility that the physical attraction may lead to acts of a sexual nature which include touching, sexual behaviour or sexual remarks, as defined in the RHPA. Joanne has two options:

1) End the professional relationship
2) End the social/romantic relationship

If Joanne chooses 1) she may then freely see her client in a social or romantic manner. If Joanne chooses 2) she would need to clearly explain her reasoning to her client. Joanne would also need to be honest with herself and assess whether this strong attraction to the client may affect her ability to objectively exercise her professional judgment in providing client-centred care. Because of the nature of her social interaction and sexual attraction to the client it may be challenging for Joanne to determine whether the professional relationship has already or has the future potential to be compromised.

In addition, this scenario presents a clear-cut boundary crossing. Joanne and her client have now engaged in a dual relationship as they have interacted socially at the charity gala dinner. Boundary crossings should be avoided as they can interfere with the professional relationship between an RD and her/his client.

There should always be a clear delineation of the professional-client relationship. RDs have the responsibility to identify when they or their clients are crossing boundaries and take corrective actions.

SCENARIO 3: MY CLIENT IS IN LOVE WITH ME

Tim is an RD who has a thriving dietetic practice in a fitness centre. He has been providing dietetic services to a client who has experienced significant weight loss success. At the most recent visit, his client informs Tim that she is ecstatic with her progress and reports that she's in love with him.

Tim is flattered but indicates that he is happily married. In addition, he mentions that as a regulated health care provider he has a responsibility to ensure that he always maintains a professional relationship with his clients and only a professional one. Has Tim managed this situation appropriately?

There may be many circumstances in which a client could develop feelings for an RD, especially if the RD was supportive and instrumental in the client reaching their health and nutrition goals. In this case, it was important for Tim to have an open discussion with his client regarding client-professional boundaries:

- He respectfully explained that RDs need to ensure they do not engage in romantic relationships with their clients.
- He indicated that their relationship could only be professional in nature and that if the client is willing, he would continue to provide dietetic services in this manner.
- He explained that if the client is uncomfortable or has difficulty adhering to these boundaries, Tim would refer her to another RD for dietetic services.

In this case, Tim is considered to be in the "Safe Zone" of the sexual abuse scale as he has openly addressed the romantic feeling from his client, offered to continue with the professional relationship, and provided the client with options for alternate dietetic services as needed.